

DEPARTMENT OF STATE REVENUE

02-20180451.LOF

Letter of Finding Number: 02-20180451
Corporation Income Tax
For Tax Year 2016

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Business secured a filing extension but did not remit payment until shortly before the extended filing date. Interest was properly imposed under statutory provisions.

ISSUE**I. Tax Administration–Interest.**

Authority: IC § 6-3-4-12; IC § 6-8.1-5-1; IC § 6-8.1-6-1; IC § 6-8.1-10-1; *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, (Ind. 2012); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, (Ind. Tax Ct. 2007).

Taxpayer protests the interest assessed on the tax due on the 2016 Indiana Partnership Return.

STATEMENT OF FACTS

Taxpayer is an Indiana business and is a wholly-owned partnership whose two partners ("Partner 1" and "Partner 2") are included on a combined Indiana income tax return. The Department issued a proposed assessment to Taxpayer for interest on an under-remitted amount of income tax for the tax year 2016. Taxpayer protested the proposed assessment, but opted for the Department to issue its final decision based on the information provided with the protest. Therefore, no administrative hearing was held and this Letter of Finding was written based on the material in the protest file. Further facts will be supplied as required.

I. Tax Administration–Interest.**DISCUSSION**

Taxpayer protests the assessment of interest on its 2016 Indiana income taxes. The Department imposed the interest on the basis that Taxpayer did not remit the correct amount of tax in a timely manner. Taxpayer filed for an extension with the Internal Revenue Service ("IRS"), which moved its deadline for filing its 2016 Indiana income tax return to October 18, 2017. Also, when the group of affiliated entities to which Partner 1 and Partner 2 belong, filed its 2016 Indiana income tax return, the group of affiliated entities' circumstances resulted in no Indiana income tax due. The Department therefore wholly refunded the amount of base tax which Taxpayer had previously remitted. Taxpayer states that it withheld and remitted income taxes which would be imposed on the two partners in the partnership that owned Taxpayer with the intention of avoiding penalties. In these circumstances, Taxpayer argues, interest should not be imposed.

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of providing that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar*,

Inc., 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

The first relevant statute is IC § 6-8.1-6-1, which states:

- (a) This subsection does not apply to a person's Indiana adjusted gross income tax return or a person's financial institutions tax return. If a person responsible for filing a tax return is unable to file the return by the appropriate due date, the person may petition the department, before that due date, for a filing extension. When the department receives the petition, the department shall grant the person a sixty (60) day extension.
- (b) If a person responsible for filing a tax return has received an extension of the due date and is still unable to file the return by the extended due date, the person may petition the department for another extension. The person must include in the petition a statement of the reasons for the person's inability to file the return by the due date. If the department finds that the person's petition is proper and that the person has good cause for requesting the extension, the department may extend the person's due date for any period that the department deems reasonable under the circumstances. The department may allow additional, successive extensions if the person properly petitions for the extension before the end of the person's current extension period.
- (c) The following apply only to a person's Indiana adjusted gross income tax return or a person's financial institutions tax return:
 - (1) If the Internal Revenue Service allows a person an extension on the person's federal income tax return, the corresponding due dates for the person's Indiana income tax returns are automatically extended for the same period as the federal extension, plus thirty (30) days.
 - (2) If a person petitions the department for a filing extension for the person's Indiana adjusted gross income tax return or financial institutions tax return without obtaining an extension for filing the person's federal income tax return, the department shall extend the person's due date for the person's Indiana adjusted gross income tax return or financial institutions tax return for the same period that the person would have been allowed under subdivision (1) if the person had been granted an extension by the Internal Revenue Service.
- (d) *A person submitting a petition for an extension under this section is not required to include any payment of tax with the petition. However, a person obtaining an extension under this section must pay at least ninety percent (90[percent]) of the tax that is reasonably expected to be due on the original due date by that due date, or the person may be subject to the penalties imposed for failure to pay the tax.*
- (e) *Any tax that remains unpaid during an extension period accrues interest at a rate established under [IC 6-8.1-10-1](#) from the original due date, but that tax will not accrue any late payment penalties until the extension period has ended. Any penalties must be determined based on the amount of tax not paid on or before the end of the extension period after application of payments provided under [IC 6-8.1-8-1.5](#) and determined as of the deadline of the extension period.*
(Emphasis added).

Interest is imposed under IC § 6-8.1-10-1, which states:

- (a) *If a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on the person's return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment.*
- (b) The interest for a failure described in subsection (a) is the adjusted rate established by the commissioner under subsection (c), from the due date for payment. *The interest applies to:*
 - (1) the full amount of the unpaid tax due if the person failed to file the return;
 - (2) the amount of the tax that is not paid, if the person filed the return but failed to pay the full amount of tax shown on the return; or
 - (3) *the amount of the deficiency.*
- (c) The commissioner shall establish an adjusted rate of interest for a failure described in subsection (a) and for an excess tax payment on or before November 1 of each year. For purposes of subsection (b), the adjusted rate of interest shall be the percentage rounded to the nearest whole number that equals two (2) percentage points above the average investment yield on state general fund money for the state's previous fiscal year, excluding pension fund investments, as determined by the treasurer of state on or before October 1 of each year and reported to the commissioner. For purposes of [IC 6-8.1-9-2\(c\)](#), the adjusted rate of interest for an excess tax payment must be the same as the adjusted rate of interest determined under this subsection for a failure described in subsection (a). The adjusted rates of interest established under this subsection shall take effect on January 1 of the immediately succeeding year.
- (d) For purposes of this section, the filing of a substantially blank or unsigned return does not constitute a return.

(e) Except as provided by [IC 6-8.1-3-17\(c\)](#), [IC 6-8.1-3-17\(e\)](#), and [IC 6-8.1-5-2](#), the department may not waive the interest imposed under this section.

(f) Subsections (a) through (c) do not apply to a motor carrier fuel tax return.
(*Emphasis added*).

The Department notes that IC §6-3-4-12(m) states:

Notwithstanding subsection (k), *a partnership is subject to a late payment penalty for the failure to file a return, pay the full amount of the tax shown on the partnership's return, or pay the deficiency of the withholding taxes due under this section for any amount of withholding tax, including any interest under [IC 6-8.1-10-1](#), reported or paid after the due date of the return, as adjusted by any extension under [IC 6-8.1-6-1](#).*
(*Emphasis added*).

In the course of the protest process, Taxpayer provided explanation that, since ultimately no taxes were due for Partner 1 and Partner 2 and since it had previously remitted payment, it believes that no interest should be assessed. However, IC § 6-3-4-12(m) establishes that interest may be due under IC § 6-8.1-10-1, subject to any adjustments under IC § 6-8.1-6-1. The Department refers to IC § 6-8.1-6-1(e), which provides that any tax that remains unpaid during an extension period accrues interest at a rate established under IC § 6-8.1-10-1 from the original due date. In the instant case, the Department's records show that Taxpayer's payment was received by the Department on September 27, 2017. The original filing date was April 18, 2017. Therefore under IC § 6-8.1-6-1(e), Taxpayer was subject to interest on the amount of unpaid tax for the time from the original filing date until the date that payment was received. Thus, interest was properly imposed. Taxpayer has not met the burden imposed under IC § 6-8.1-5-1(c) of proving the proposed assessment wrong.

FINDING

Taxpayer's protest is denied.

July 31, 2018

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An [html](#) version of this document.